



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2014-0720; FRL-9949-29-Region 1]

**Air Plan Approval; Massachusetts; Infrastructure State
Implementation Plan Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of State Implementation Plan (SIP) submissions from Massachusetts regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to conditionally approve three aspects of the Commonwealth's submittals. In addition, we are also proposing findings of failure to submit pertaining to various aspects of the prevention of significant deterioration (PSD) requirements of infrastructure SIPs.

Lastly, we are proposing to remove 40 CFR 52.1160 as legally obsolete.

The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2014-0720, at <http://www.regulations.gov>, or via email to arnold.anne@epa.gov. For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment

contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046; mcconnell.robert@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. Additionally, the term "the Commonwealth" refers to the state of Massachusetts.

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I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What Massachusetts SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Massachusetts Department of Environmental Protection (MassDEP). The Commonwealth submitted its infrastructure State Implementation Plan (ISIP) for the 1997 ozone NAAQS on December 14, 2007, its ISIP for the 200b Pb NAAQS on December 4, 2012,

and its ISIPs for the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS on June 6, 2014.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} (Fine Particle) National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM_{2.5} NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)" (2009 Memo), followed by the October 14, 2011, "Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the

2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

C. What is the scope of this rulemaking?

EPA is proposing approval of most aspects of the SIP submissions from Massachusetts that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Additionally, we are proposing approval of a statute submitted by Massachusetts that supports the infrastructure SIP submittals, proposing conditional approval of certain aspects of the Commonwealth's submittals as discussed below, and proposing findings of failure to submit for a number of ISIP provisions that pertain to the State's PSD program.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that

provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of" a new or revised NAAQS. This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that "each such plan" must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources ("SSM" emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's

discretion" that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (See 79 FR 27241; May 13, 2014).

III. What guidance is EPA using to evaluate these SIP submissions?

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states' development and EPA review of infrastructure SIPs, in

some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 PM_{2.5} NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

Pursuant to section 110(a), and as noted in the 2011 Memo and the 2013 Memo, states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MassDEP held a public hearing on the ISIP for the 2008 Pb NAAQS on June 12, 2012, and held a public hearing on the ISIPs for the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS on September 6, 2013.

EPA is soliciting comment on our evaluation of the state's infrastructure SIP submissions in this notice of proposed rulemaking. Massachusetts provided detailed synopses of how various components of its SIP meet each of the requirements in section 110(a)(2) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

A. Section 110(a)(2)(A) - Emission limits and other control measures.

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.¹ In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

¹ See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964, 67034 (Nov. 12, 2008).

Massachusetts General Law (M.G.L.) c 21A, § 8, *Executive Office of Energy and Environmental Affairs Organization of Departments; powers, duties and functions*, creates and sets forth the powers and duties of the Department of Environmental Protection (MassDEP) within the Executive Office of Energy and Environmental Affairs. In addition, M.G.L. c.111, §§ 142A through 142N, which, collectively, are referred to as the *Massachusetts Pollution Control Laws*, provide MassDEP with broad authority to prevent pollution or contamination of the atmosphere and to prescribe and establish appropriate regulations. Furthermore, M.G.L. c.21A, § 18, *Permit applications and compliance assurance fees; timeline action schedules; regulations*, authorizes MassDEP to establish fees applicable to the regulatory programs it administers.

MassDEP has adopted numerous regulations within the Code of Massachusetts Regulations (CMR) in furtherance of the objectives set out by these statutes, including *310 CMR 4.00: Timely Action & Fee Schedule Regulations*, *310 CMR 6.00, Ambient Air Quality Standards for the Commonwealth of Massachusetts*, and *310 CMR 7.00: Air Pollution Control Regulations*. For example, many SIP-approved State air quality regulations within 310 CMR 7.00 provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters that satisfy the requirements of the CAA

section 110(a)(2)(A) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, including but not limited to 7.18, *Volatile and Halogenated Organic Compounds*, 7.19, *Reasonably Available Control Technology (RACT) for Sources of NO_x*, and 7.29, *Emission Standards for Power Plants*.

We note, however, that we are conditionally approving this element because the SIP-approved version of 310 CMR 7.00 uses the term "National Ambient Air Quality Standards (NAAQS)," but does not contain a definition for this term. Therefore, there is uncertainty as to which versions of the NAAQS the term incorporates. By letter dated June 14, 2016, Massachusetts committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts' infrastructure submissions, a definition for NAAQS in 310 CMR 7.00 that would reflect the current versions of the various NAAQS we are proposing to act on in this rulemaking.

In recognition of the above, EPA proposes that Massachusetts has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, with the exception of the issue related to a definition of NAAQS in 310 CMR 7.00, for which we are proposing a conditional approval.

In addition to the above, we are proposing to remove as legally obsolete 40 CFR 52.1160, which was promulgated on

January 24, 1995 (60 FR 4737). Section 52.1160 provides that "Massachusetts' adopted LEV [Low Emission Vehicle] program must be revised to the extent necessary for the state to comply with all aspects of the requirements of 40 CFR 51.120," a provision that was promulgated in the same action (60 FR 4736) and that required certain states to adopt the Ozone Transport Commission (OTC) LEV program or equivalent measures. (The OTC LEV program is based on California's LEV program and requires that only cleaner "LEV" cars be sold in the states in which it has been adopted). On March 11, 1997, however, the U.S. Court of Appeals for the District of Columbia Circuit vacated the provisions of 40 CFR 52.120. See *Virginia v. EPA*, 108 F.3d 1397. Nonetheless, the Commonwealth has adopted a Low Emission Vehicle Program based on California's LEV program (310 CMR 7.40), the latest version of which was approved into the SIP on December 23, 2002 (67 FR 78181). Because of the vacatur, EPA concludes that 40 CFR 52.1160 is obsolete and proposes to remove it from the CFR.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

**B. Section 110(a)(2)(B) - Ambient air quality
monitoring/data system.**

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Under MGL c.111, §§ 142B to 142D, MassDEP operates an air monitoring network. EPA approved the state's most recent Annual Air Monitoring Network Plan for Pb, ozone, NO₂, and SO₂ on November 13, 2015. Furthermore, MassDEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that MassDEP has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

C. Section 110(a)(2)(C) - Program for enforcement of control measures and for construction or modification of stationary sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160 - 169B) addresses PSD, while part D of the CAA (sections 171 - 193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and, (iii) permitting program for minor sources and minor modifications. A discussion of greenhouse gas (GHG) permitting and the "Tailoring

Rule"² is included within our evaluation of the PSD provisions of the Commonwealth's submittals.

i. Sub-element 1: Enforcement of SIP measures

MassDEP staffs and implements an enforcement program pursuant to authorities provided within the following laws: M.G.L. c.111, § 2C, *Pollution violations; orders of department of environmental protection*, which authorizes MassDEP to issue orders enforcing pollution control regulations generally; M.G.L. c.111, §§ 142A through 142O, *Massachusetts Pollution Control Laws*, which, among other things, more specifically authorize MassDEP to adopt regulations to control air pollution, enforce such regulations, and issue penalties for non-compliance; and, M.G.L. c.21A, §16, *Civil Administrative Penalties*, which provides additional authorizations for MassDEP to assess penalties for failure to comply with the Commonwealth's air pollution control laws and regulations. Moreover, SIP-approved

² In EPA's April 28, 2011 proposed rulemaking for several states' infrastructure SIPs for the 1997 ozone and PM_{2.5} NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (See 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for several infrastructure SIPs for the 2006 PM_{2.5} NAAQS (See 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO_x as a precursor to ozone, PM_{2.5} precursors, PM_{2.5} and PM₁₀ condensables, PM_{2.5} increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

regulations, such as 310 CMR 7.02(12)(e) and (f), provide a program for the enforcement of SIP measures. Accordingly, EPA proposes that Massachusetts has met this requirement of section 110(a)(2)(C) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

ii. Sub-element 2: Preconstruction program for major sources and major modifications

Sub-element 2 of section 110(a)(2)(C) requires that states provide for the regulation of modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, including a program to meet PSD and NNSR requirements. PSD applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS, and NNSR requires similar actions in nonattainment areas.

Massachusetts does not have an approved state PSD program and has made no submittals addressing the PSD sub-element of section 110(a)(2)(C). The Commonwealth has long been subject to a Federal Implementation Plan (FIP), however, and has implemented and enforced the federal PSD program through a delegation agreement. See 76 FR 31241; May 31, 2011.

Accordingly, EPA is proposing a finding of failure to submit with respect to the PSD-related requirements of this sub-element for the 2010 NO₂ and 2010 SO₂ NAAQS.³ See CAA section 110(c)(1). This finding, however, does not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the deficiency is addressed by the FIP already in place. Moreover the state is not subject to mandatory sanctions solely as a result of this finding, because the SIP submittal deficiencies are neither with respect to a sub-element that is required under part D nor in response to a SIP call under section 110(k)(5) of the Act.

iii. Sub-element 3: Preconstruction permitting for minor sources and minor modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that

³ EPA has previously issued findings of failure to submit infrastructure SIPs addressing the PSD-related requirements of section 110(a)(2) for the 1997 ozone NAAQS, 73 FR 16205 (Mar. 27, 2008), the 2008 ozone NAAQS, 78 FR 2882 (Jan. 15, 2013), and the 2008 Pb NAAQS, 78 FR 12961 (Feb. 26, 2013), and Massachusetts has made no additional submissions to address the PSD-related requirements for these NAAQS since those previous findings.

govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA's most recent approval of the Commonwealth's minor NSR program occurred on April 5, 1995 (60 FR 17226). Since this date, Massachusetts and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

In summary, we are proposing to find that Massachusetts has met the enforcement related aspects of Section 110(a)(2)(C) discussed above within sub-element 1, and the preconstruction permitting requirements for minor sources discussed in sub-element 3, for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Also, we are proposing, pursuant to section 110(c)(1), to find that the state has failed to make required submissions related to major source preconstruction permitting for the 2010 NO₂ and 2010 SO₂ NAAQS for the reasons provided in sub-element 2 above.

D. Section 110(a)(2)(D) - Interstate transport.

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution

that states must address. It covers the following 5 topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interfere with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the 4 prongs discussed below, 2 of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

i. Sub-element 1: Section 110(a)(2)(D)(i)(I) - Contribute to nonattainment (prong 1) and interfere with maintenance of the NAAQS (prong 2)

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as PM_{2.5} or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit Pb at a

location and in such quantities that contribute significantly to nonattainment in, or interfere with maintenance by, any other state, EPA anticipates that this would be a rare situation (e.g., sources emitting large quantities of Pb in close proximity to state boundaries). The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to Pb can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.

Massachusetts' infrastructure SIP submission for the 2008 Pb NAAQS notes that there are no major sources of Pb emissions located in close proximity to any of the state's borders with neighboring states, or elsewhere in the state. Our review of data within our National Emissions Inventory (NEI) database confirms this, and also indicates that there is no group of sources anywhere within the state likely to emit enough Pb to cause ambient concentrations to approach the Pb NAAQS. Therefore, we propose that Massachusetts has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Massachusetts' infrastructure SIP submission for the 2010 NO₂ NAAQS notes that Massachusetts sources do not contribute to non-attainment or maintenance in other states, given that all surrounding states are designated as "unclassifiable/attainment." This statement is accurate, and indeed there are no NO₂ nonattainment areas anywhere in the United States. 77 FR 9532 (Feb. 17, 2012). We examined the design values from NO₂ monitors in Massachusetts and neighboring states based on data collected between 2012 and 2014. In Massachusetts, the highest design value was 49 parts per billion (ppb) (versus the NO₂ standard of 100 ppb) at a monitor in Boston. The highest design value we found in a neighboring state was 58 ppb in Queens, NY. We believe that with the continued implementation of Massachusetts PSD FIP, and the Commonwealth's NSR regulations, the state's low monitored values of NO₂ will continue. In other words, the NO₂ emissions from Massachusetts are not expected to cause or contribute to a violation of the 2010 NO₂ NAAQS in another state, and these emissions are not likely to interfere with the maintenance of the 2010 NO₂ NAAQS in another state. Therefore, we propose that Massachusetts has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO₂ NAAQS.

In today's rulemaking, we are not proposing to approve or disapprove Massachusetts' compliance with section

110(a)(2)(D)(i)(I) with respect to the 1997 ozone, 2008 ozone, or 2010 SO₂ NAAQS, since the Commonwealth's SIP revisions upon which we are acting today do not include a submittal with respect to transport for sub-element 1, prongs 1 and 2 for these pollutants. Effective August 12, 2015, EPA found that Massachusetts, among a number of other states, had not made a complete good neighbor SIP submittal for the 2008 ozone NAAQS to meet the requirements of section 110(a)(2)(D)(i)(I). See 80 FR 39961 (July 13, 2015).

ii. Sub-element 2: Section 110(a)(2)(D)(i)(II) - PSD
(prong 3)

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. A state's infrastructure SIP submittal cannot be considered approvable for prong 3 unless EPA has issued final approval of the state's PSD SIP, or alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other states' measures to prevent significant deterioration of air quality.

As discussed under element C above, Massachusetts is currently subject to a PSD FIP. Therefore, we are proposing a finding of failure to submit for prong 3 of 110(a)(2)(D)(i)(II) with respect to the PSD requirement, in the same manner as discussed under element C above. However, this finding will not trigger any sanctions or additional FIP obligation.

Under prong 3 of 110(a)(2)(D)(i)(II), EPA also reviews the potential for in-state sources not subject to PSD to interfere with PSD in an attainment or unclassifiable area of another state. EPA guidance recommends that a "fully approved nonattainment [new source review (NNSR)] program with respect to any previous NAAQS may generally be considered by the EPA as adequate for purposes of meeting this requirement of prong 3 with respect to sources and pollutants subject to such program." 2013 Guidance at 32. EPA last approved the Commonwealth's NNSR program on October 27, 2000. 65 FR 64360. Because Massachusetts is located within the Ozone Transport Region, see CAA § 184(a), 42 U.S.C. § 7511c(a), sources emitting 50 tpy or more of NO_x or VOCs are subject to the requirements that would be applicable to major stationary sources if the area were classified as a moderate nonattainment area, CAA §§ 182(f)(1), 184(b)(2), 42 U.S.C. §§ 7511a, 7511c. In other words, even if located in an area designated attainment for ozone, such sources are not subject to PSD, but rather, are to be subject to NNSR.

Massachusetts' SIP-approved NNSR regulations, however, apply by their terms only to nonattainment areas,⁴ meaning that sources of 50 tpy or more of VOCs or NO_x in much of Massachusetts are not covered by either the PSD FIP or the state's EPA-approved NNSR program and, thus, the state has not shown that it has met this requirement of prong 3. The Commonwealth has promulgated and implements NNSR regulations, however, that make the state's NNSR program applicable to such sources regardless of area designation. In a letter dated June 14, 2016, the Commonwealth committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts' infrastructure submissions, the necessary provisions that would make its EPA-approved NNSR program applicable to such sources. Accordingly, we propose to conditionally approve Massachusetts' submittals for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS for this aspect of prong 3.

iii. Sub-element 3: Section 110(a)(2)(D)(i)(II) -
Visibility protection (prong 4)

⁴ At the time EPA last approved Massachusetts' NNSR regulations (October 27, 2000; 65 FR at 64361), the Western Massachusetts area was nonattainment for the one-hour ozone standard, and the Eastern Massachusetts area was attaining the standard, but destined to become nonattainment as of January 16, 2001, upon EPA's reinstatement of the one-hour ozone NAAQS for that area.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

The Commonwealth's Regional Haze SIP was approved by EPA on September 13, 2013. See 78 FR 57487. Accordingly, EPA proposes that Massachusetts has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

iv. Sub-element 4: Section 110(a)(2)(D)(ii) - Interstate pollution abatement

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. As mentioned

elsewhere in this notice, Massachusetts is currently subject to a PSD FIP and it did not make submittals addressing the PSD-related requirements of section 126(a). Therefore, we are proposing to make a finding of failure to submit for section 110(a)(2)(D)(ii) regarding PSD-related notice of interstate pollution with respect to the 2010 NO₂ and 2010 SO₂ NAAQS.⁵ This finding does not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the federal PSD rules address the notification issue. See 40 CFR 52.21(q), 124.10(c)(vii); see also *id.* § 52.1165. Nor does the finding trigger any sanctions. Massachusetts has no obligations under any other provision of section 126.

v. Sub-element 5: Section 110(a)(2)(D)(ii) -
International pollution abatement

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Massachusetts does not have any pending obligations under section 115 for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Therefore, EPA is proposing

⁵ As discussed earlier, *supra* n.3, EPA has previously issued findings of failure to submit for Massachusetts for the PSD-related requirements of 110(a)(2)(D)(ii) for the 1997 ozone, 2008 ozone, and 2008 Pb NAAQS.

that the Commonwealth has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

E. Section 110(a)(2)(E) – Adequate resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This last sub-element, however, is inapplicable to this action, because Massachusetts does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues

Massachusetts, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Massachusetts General Laws c. 111, sections 142A to 142N, provide MassDEP with the authority to carry out the state's implementation plan. The Massachusetts SIP, as originally submitted in 1971 and subsequently amended, provides descriptions of the staffing and funding necessary to carry out the plan. In the submittals, MassDEP provides assurances that it has adequate personnel and funding to carry out the SIP during the five years following infrastructure SIP submission and in future years. Additionally, the Commonwealth receives CAA section 103 and 105 grant funds through Performance Partnership agreements and provides state matching funds, which together enable Massachusetts to carry out its SIP requirements. In light of the foregoing, EPA proposes that Massachusetts has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Sub-element 2: State board requirements under section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of

section 128(a) of the CAA. That provision contains two explicit requirements: (1) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Massachusetts does not have a state board that approves permits or enforcement orders under the CAA. Instead, permits and enforcement orders are approved by the Commissioner of MassDEP. Thus, Massachusetts is not subject to the requirements of paragraph (a)(1) of section 128. As to the conflict of interest provisions of section 128(a)(2), Massachusetts has cited to M.G.L. c. 268A, sections 6 and 6A of the Commonwealth's Conflict of Interest law in its June 6, 2014 infrastructure SIP submittal for the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS and requested that these sections be included in the SIP to satisfy this infrastructure SIP requirement.⁶ Pursuant to these state provisions, state employees in Massachusetts, including the head

⁶ In its June 6, 2014 submittal, Massachusetts also requested that M.G.L. c. 268A, section 7 be added to the SIP. By letter dated June 14, 2016, however, Massachusetts withdrew section 7 from consideration for inclusion in the SIP. Section 7 contains state-specific penalties that are not needed to satisfy CAA section 110(a)(2)(E)(ii).

of an executive agency with authority to approve air permits or enforcement orders, are required to disclose potential conflicts of interest to, among others, the state ethics commission. We are proposing to find that M.G.L. c. 268A, sections 6 and 6A satisfy the requirements of section 110(a)(2)(E)(ii) of the Clean Air Act, to approve them into the Massachusetts SIP, and, consequently, to approve the Commonwealth's ISIP submittals for section 110(a)(2)(E)(ii) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

F. Section 110(a)(2)(F) - Stationary source monitoring system

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the

reports shall be available at reasonable times for public inspection.

Pursuant to M.G.L. c. 111, sections 142A to 142D, MassDEP has the necessary authority to maintain and operate air monitoring stations, and coordinates with EPA in determining the types and locations of ambient air monitors across the state. The Commonwealth uses this authority to collect information on air emissions from sources in the state. Additionally, Massachusetts statutes and regulations provide that emissions data shall be available for public inspection. See, e.g., M.G.L. c. 111, section 142B; 310 CMR sections 3.33(5), 7.12(4)(b); 7.14(1). The following SIP-approved regulations enable the accomplishment of the Commonwealth's emissions recording and reporting objectives:

1. 310 CMR 7.12, Source Registration.
2. 310 CMR 7.13, Stack Testing.
3. 310 CMR 7.14, Monitoring Devices and Reports.

EPA recognizes that Massachusetts routinely collects information on air emissions from its industrial sources and makes this information available to the public. EPA, therefore, proposes that the Commonwealth has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

G. Section 110(a)(2)(G) - Emergency powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an "imminent and substantial endangerment to public health or welfare, or the environment." Section 303 further authorizes the Administrator to issue "such orders as may be necessary to protect public health or welfare or the environment" in the event that "it is not practicable to assure prompt protection . . . by commencement of such civil action."

We propose to find that the Commonwealth's ISIP submittals demonstrate that certain state statutes and regulations provide for authority comparable to that in section 303. Massachusetts' submittals cite M.G.L. C. 111, section 2B, *Air Pollution Emergencies*, which authorizes the Commissioner of the MassDEP to "declare an air pollution emergency" if the Commissioner "determines that the condition or impending condition of the atmosphere in the Commonwealth . . . constitutes a present or reasonably imminent danger to health." During such an air pollution emergency, the Commissioner is authorized pursuant to

section 2B, to "take whatever action is necessary to maintain and protect the public health, including but not limited to . . . prohibiting, restricting and conditioning emissions of dangerous or potentially dangerous air contaminants from whatever source derived" Additionally, sections 2B and 2C authorize the Commissioner to issue emergency orders.

Moreover, M.G.L. c. 21A, section 8 provides that, "[i]n regulating . . . any pollution prevention, control or abatement plan [or] strategy . . . through any . . . departmental action affecting or prohibiting the emission . . . of any hazardous substance to the environment . . . the department may consider the potential effects of such plans [and] strategies . . . on public health and safety and the environment . . . and said department shall act to minimize and prevent damage or threat of damage to the environment."

These duties are implemented, in part, under MassDEP regulations at 310 CMR 8.00, *Prevention and Abatement of Air Pollution Episodes and Air Pollution Incident Emergencies*, which EPA most recently approved into the SIP on October 4, 2002. See 67 FR 62184. These regulations establish levels that would constitute significant harm or imminent and substantial endangerment to health for ambient concentrations of pollutants subject to a NAAQS, consistent with the significant harm levels and procedures for state emergency episode plans established by

EPA in 40 CFR 51.150 and 51.151.⁷ Finally, M.G.L. c. 111, section 2B authorizes the state to seek injunctive relief in the superior court for violation of an emergency order issued by the MassDEP Commissioner. While no single Massachusetts statute or regulation mirrors the authorities of CAA section 303, we propose to find that the combination of state statutes and regulations discussed herein provide for comparable authority to immediately bring suit to restrain, and issue orders against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.⁸

Section 110(a)(2)(G) also requires that, for any NAAQS, States have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. See 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* The entire state is classified as Priority III for nitrogen dioxide, but contains priority classifications of I or II for particulate matter,

7 The Commonwealth's Contaminant Concentration Levels are found within Table 1 of 310 CMR 8.01, and match EPA's levels from 40 CFR Part 51.151 with the exception of the averaging time used for ozone. Massachusetts uses a 1-hour averaging time, which is slightly more protective than the 2-hour averaging time EPA provides for this pollutant.

8 By letter dated June 14, 2016, MassDEP stated that it likewise interprets M.G.L. c. 111, section 2B and M.G.L. c. 21A, section 8 as together providing MassDEP with authority comparable to that granted to the Administrator by CAA section 303.

sulfur oxides, carbon monoxide, and ozone. See 40 CFR 52.1121. Consequently, as relevant to this proposed rulemaking action, Massachusetts' SIP must contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to SO₂ and ozone.⁹

Although Massachusetts has adopted 310 CMR 8.00, *The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies*, which is modeled on EPA's example regulations for emergency contingency plans at 40 CFR part 51, Appendix L, the version of the regulation that is currently in the SIP does not fully satisfy 40 CFR 51.152. For instance, it does not specify any "emission control actions to be taken at each episode stage," as required by 40 CFR 51.152(a)(3). By letter dated June 14, 2016, MassDEP has committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts' infrastructure submissions, a regulation satisfying the contingency plan requirements of element G.

With respect to Pb, we note that Pb is not explicitly included in the contingency plan requirements of subpart H. In addition, we note that there are no large sources of Pb in Massachusetts. Specifically, a review of the National Emission

⁹ Those regulations do not specifically address Pb. See also 40 CFR 51.150.

Inventory shows that there are no sources of Pb in Massachusetts that exceed EPA's reporting threshold of 0.5 tons per year. Although not expected, if that situation were to change, Massachusetts does have general authority (e.g., M.G.L. c. 21A, section 8 and c. 111, section 2B) to restrain any source from causing imminent and substantial endangerment.

Consequently, EPA proposes that Massachusetts has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2008 Pb NAAQS. Furthermore, because all AQCRs in the state are classified as Priority III for NO₂, EPA also proposes that the Commonwealth has met the applicable requirements of section 110(a)(2)(G) for the 2010 NO₂ NAAQS. For the 1997 ozone, 2008 ozone, and 2010 SO₂ NAAQS, EPA proposes to approve Massachusetts' submittals with respect to the CAA section 303 comparable authority requirement of element G, but to conditionally approve with respect to the contingency plan requirements of element G, based on MassDEP's commitment to submit a regulation satisfying such requirements within one year of final action on the infrastructure submissions EPA is evaluating in this notice.

H. Section 110(a)(2)(H) - Future SIP revisions

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. Massachusetts General Laws c. 111, section 142D provides in relevant part that, "From time to time the department shall review the ambient air quality standards and plans for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards."

EPA proposes that Massachusetts has met the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

I. Section 110(a)(2)(I) - Nonattainment area plan or plan revisions under part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section

110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J) - Consultation with government officials; public notifications; PSD; visibility protection

The evaluation of the submissions from Massachusetts with respect to the requirements of CAA section 110(a)(2)(J) are described below.

i. Sub-element 1: Consultation with government officials

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation.

Pursuant to EPA-approved Massachusetts regulations at 310 CMR 7.02(12)(g)(2), MassDEP notifies the public "by advertisement in a newspaper having wide circulation" in the area of the particular facility of the opportunity to comment on certain proposed permitting actions and sends "a copy of the notice of public comment to the applicant, the EPA, and officials and agencies having jurisdiction over the community in

which the facility is located, including local air pollution control agencies, chief executives of said community, and any regional land use planning agency.” Massachusetts did not make a submittal, however, with respect to the requirement to consult with FLMs. As previously mentioned, Massachusetts does not have an approved state PSD program, but rather is subject to a PSD FIP. The FIP includes a provision requiring consultation with FLMs. See 40 CFR 52.21(p). Consequently, with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, EPA proposes that Massachusetts has met the consultation with local governments requirement of this portion of section 110(a)(2)(J), but proposes a finding of failure to submit with respect to the FLM consultation requirement. Because the federal PSD program, which Massachusetts implements and enforces, addresses the FLM consultation requirement, a finding of failure to submit will not result in sanctions or new FIP obligations.

ii. Sub-element 2: Public notification

Section 110(a)(2)(J) also requires states to: notify the public if NAAQS are exceeded in an area; advise the public of health hazards associated with exceedances; and enhance public awareness of measures that can be taken to prevent exceedances

and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Massachusetts regulations specify criteria for air pollution episodes and incidents and provide for notice to the public via news media and other means of communication. See 310 CMR 8.00. The Commonwealth also provides a daily air quality forecast to inform the public about concentrations of fine particles and, during the ozone season, provides similar information for ozone. Real time air quality data for NAAQS pollutants are also available on the MassDEP's website, as are information about health hazards associated with NAAQS pollutants and ways in which the public can participate in regulatory efforts related to air quality. The Commonwealth is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs, which notify the public of air quality levels through EPA's website, alerts, and press releases. In light of the above, we propose to find that Massachusetts has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

iii. Sub-element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. The Commonwealth's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(D)(ii), and our proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Specifically, we propose a finding of failure to submit with respect to the PSD sub-element of section 110(a)(2)(J) for the 2010 NO₂ and 2010 SO₂ NAAQS,¹⁰ and note that such a finding will not result in any sanctions or new FIP obligations.

iv. Sub-element 4: Visibility protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other

¹⁰ As discussed earlier, *supra* n.3, EPA has previously issued findings of failure to submit for Massachusetts for PSD-related infrastructure requirements for the 1997 ozone, 2008 ozone, and 2008 Pb NAAQS.

words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

K. Section 110(a)(2)(K) - Air quality modeling/data

To satisfy element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submit such data to EPA upon request.

Pursuant to the authority granted by M.G.L. c.111, sections 142B-142D, the MassDEP has the authority to maintain and operate air sampling stations and devices, make or perform "such examinations, inspections, observations, determinations, laboratory analyses, and surveys; maintain such records; and perform such other acts as it deems necessary to conduct an adequate air pollution control program" The agency is further authorized to require sources to report monitoring and emissions data. MassDEP accomplishes these objectives via a number of regulations, including the following:

310 CMR 7.02, Plan Approval and Emission Limitations;

310 CMR 7.12, Source Registration;

310 CMR 7.14, Monitoring Devices and Reports; and,

310 CMR 7.00, Appendix A - Emissions Offsets and Nonattainment Review.

The state also collaborates with the Ozone Transport Commission (OTC), the Mid-Atlantic Regional Air Management Association, and EPA in order to perform large scale urban airshed modeling. EPA proposes that Massachusetts has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

L. Section 110(a)(2)(L) - Permitting fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Massachusetts implements and operates the Title V permit program, which EPA approved on September 28, 2001. See 66 FR 49541. In addition, M.G.L. c. 21A, section 18 authorizes MassDEP to promulgate regulations establishing fees. To collect fees from sources of air emissions, the MassDEP promulgated and implements 310 CMR 4.00, Timely Action Schedule and Fee Provisions. These regulations set permit compliance fees, including fees for Title V operating permits. EPA proposes that the Commonwealth has met the infrastructure SIP requirements of

section 110(a)(2)(L) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

**M. Section 110(a)(2)(M) - Consultation/participation by
affected local entities**

To satisfy element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP. Pursuant to M.G.L. c. 111, section 142D, MassDEP must hold public hearings prior to revising its SIP. In addition, M.G.L. c. 30A, Massachusetts Administrative Procedures Act, requires MassDEP to provide notice and the opportunity for public comment and hearing prior to adoption of any regulation. Moreover, the Commonwealth's Executive Order No. 145 requires state agencies, including MassDEP, to provide notice to the Local Government Advisory Committee to solicit input on the impact of proposed regulations and other administrative actions on local governments. Therefore, EPA proposes that Massachusetts has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

V. What action is EPA taking?

EPA is proposing to approve most portions of the SIP submissions from Massachusetts certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, with the exception of certain aspects relating to PSD which we have either already made, or are proposing, a finding of failure to submit. Additionally, we are proposing to conditionally approve several aspects of the Commonwealth's submittals. EPA's proposed action for each element for each NAAQS is stated in Table 1 below.

Table 1: Proposed action on MA infrastructure SIP
submittals for various NAAQS

Element	1997 Ozone	2008 Pb	2008 Ozone	2010 NO ₂	2010 SO ₂
(A): Emission limits and other control measures	CA	CA	CA	CA	CA
(B): Ambient air quality monitoring and data system	A	A	A	A	A
(C)(i): Enforcement of SIP measures	A	A	A	A	A
(C)(ii): PSD program for major sources and major modifications	PF	PF	PF	FS	FS
(C)(iii): Permitting program for minor sources and minor modifications	A	A	A	A	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	NI	A	NS	A	NS
(D)(i)(II): PSD (prong 3)	PF/CA	PF/CA	PF/CA	FS/CA	FS/CA
(D)(i)(II): Visibility Protection (prong 4)	A	A	A	A	A
(D)(ii): Interstate Pollution Abatement	PF	PF	PF	FS	FS
(D)(ii): International Pollution Abatement	A	A	A	A	A
(E)(i): Adequate resources	A	A	A	A	A
(E)(ii): State boards	A	A	A	A	A
(E)(iii): Necessary	NA	NA	NA	NA	NA

assurances with respect to local agencies					
(F): Stationary source monitoring system	A	A	A	A	A
(G): Emergency power	CA	A	CA	A	CA
(H): Future SIP revisions	A	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+
(J)(i): Consultation with government officials	FS	FS	FS	FS	FS
(J)(ii): Public notification	A	A	A	A	A
(J)(iii): PSD	PF	PF	PF	FS	FS
(J)(iv): Visibility protection	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A

In the above table, the key is as follows:

A	Approve
CA	Conditional approval
FS	Finding of failure to submit
NA	Not applicable
NI	Not included in submittal we are acting on in today's action
NS	No Submittal
PF	Prior finding of failure to submit
+	Not germane to infrastructure SIPs

In addition, we are proposing to incorporate into the Massachusetts SIP sections 6 and 6A of the state's Conflict of Interest law, which the Commonwealth submitted on June 6, 2014, and are proposing to remove 40 CFR 52.1160 regarding Massachusetts LEV in that it is legally obsolete.

As shown in Table 1, we are proposing to issue a finding of failure to submit for sub-element J(i) pertaining to the requirement for consultation with FLMS for all five of the cited NAAQS, and note that in light of the PSD FIP, this finding will not result in sanctions or new FIP obligations. Additionally, we are also proposing to issue findings of failure to submit with respect to the PSD-related elements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the 2010 NO₂ and 2010 SO₂ NAAQS. As noted above, Massachusetts is already subject to a FIP for PSD, and so EPA will have no additional FIP obligations under section 110(c) of the Act if this action is finalized as proposed. Furthermore, the state will not be subject to mandatory sanctions as a result of these actions.

EPA is proposing to conditionally approve an aspect of the Commonwealth's submittal for element 110(a)(2)(A) pertaining to ambient air quality standards because the current, SIP-approved version of 310 CMR 7.00, Air Pollution Control, does not reflect the current version of the various NAAQS we are proposing to act on in this rulemaking. However, by letter dated June 14, 2016,

the Commonwealth committed to add a definition of NAAQS 310 CMR 7.00 that includes a calendar date to address this issue. For this reason, EPA is proposing to conditionally approve this SIP revision provided that the Commonwealth submits to EPA an updated version of 310 CMR 7.00. Additionally, we are proposing to conditionally approve the Commonwealth's submittals for element 110(a)(2)(G) pertaining to contingency plans for the 1997 and 2008 ozone NAAQS, and 2010 SO₂ NAAQS, pursuant to Massachusetts commitment within their June 14, 2016 letter, to submit a regulation meeting the contingency plan requirement of element 110(a)(2)(G) by a date no later than one year from EPA's final action on these infrastructure SIPs. And last, we are proposing to conditionally approve the aspect of 110(a)(2)(D)(i)(II) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS pertaining to the Commonwealth's NNSR program pursuant to the state's June 14, 2016 letter committing to submit portions of 310 CMR 7.00: Appendix A, to EPA as a SIP revision request by one year from our final action on these ISIPs.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If EPA conditionally

approves these commitments in a final rulemaking action, Massachusetts must meet its commitments to: submit an updated version of 310 CMR 7.00, Air Pollution Control, containing a calendar date to clarify which NAAQS are being referenced, to fully meet the requirements of element 110(a)(2)(A); submit revisions to its SIP-approved nonattainment new source review regulations to fully meet the requirements of element 110(a)(2)(D)(i)(II); and, submit a regulation addressing the contingency plan requirement of section 110(a)(2)(G). If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, these commitments will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval(s) automatically converted to a disapproval(s). If the State meets its commitments within the applicable time frame, the conditionally approved submissions will remain a part of the SIP until EPA takes final action approving or disapproving them. If EPA disapproves the new submittals, the conditionally approved regulations will also be disapproved at that time. If EPA approves the submittals, the regulations will be fully approved in its entirety and replace the conditionally approved program in the SIP. If EPA determines that it cannot issue a

final conditional approval or if the conditional approvals are converted to disapprovals, such action will trigger the Federal implementation plan (FIP) requirement under section 110(c).

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VI. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference into the Massachusetts SIP M.G.L c. 268A, sections 6 and 6A of the Commonwealth's Conflict of Interest law submitted to EPA on June 6, 2014. The EPA has made, and will continue to make, this document generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA

office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur Oxides, Reporting and recordkeeping requirements.

Dated: July 5, 2016.

H. Curtis Spalding,
Regional Administrator
EPA New England